

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

Re: ECF No. 16857

(Jointly Administered)

**FOURTH JOINT STATUS REPORT OF THE COMMONWEALTH OF PUERTO RICO
AND CONSUL-TECH CARIBE, INC.**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), on behalf of the Commonwealth of Puerto Rico (the “Commonwealth” or the “Debtor”),² pursuant to the authority granted to it under Act 2-2017, and Consul-Tech Caribe, Inc (“Consul-Tech” or “Movant”), respectfully submit this fourth joint status report (the “Fourth Joint Status Report”) in compliance with the Court’s *Order Setting Deadline for Further Status Report Regarding Consul-*

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations.).

² The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the Debtors’ sole Title III representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), authorized AAFAF to file this Fourth Joint Status Report on behalf of the Commonwealth.

Tech Caribe Inc's Motion for Allowance and Payment of Administrative Expense Claim [ECF No. 16857] (the "Fourth Joint Status Report Order").³

I. PROCEDURAL BACKGROUND

1. On May 3, 2017 (the "Petition Date"), the Debtor, by and through the Oversight Board as the Debtor's representative pursuant to section 315(b) of PROMESA, filed a petition with the United States District Court for the District of Puerto Rico under Title III of PROMESA (the "Title III Case").

2. On January 13, 2020, Movant filed the *Motion for Allowance and Payment of Administrative Expense Claim* [ECF No. 9845] (the "Administrative Expense Motion"), pursuant to section 503 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code"), requesting that the Court enter an order directing the Debtor to pay the amount of \$5,120,772.50 as an allowed administrative expense claim (the "Claim"). Movant asserted in the Administrative Expense Motion that the amounts allegedly owed by the Debtor are for post-petition services provided by Movant and that, as a result, Movant is entitled to administrative expense priority and immediate payment. See, *Administrative Expense Motion* at p. 21.

3. After several extensions of time requested by the Commonwealth to attempt to gather the necessary information to evaluate and reconcile the Claim, and investigate the allegations made in the Administrative Expense Motion while attempting to continue to negotiate a consensual resolution with Consul-Tech, on August 26, 2020, AAFAF, on behalf of the Commonwealth, filed an objection to the Administrative Expense Motion (the "Objection") [ECF No. 14114].

³ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the *Third Joint Status Report of the Commonwealth of Puerto Rico and Consul-Tech Caribe Inc.* (the "Third Joint Status Report"). [ECF No. 16839].

4. On September 2, 2020, Consul-Tech filed its reply in response to the Commonwealth's Objection (the "Reply") [ECF No. 14168].

5. On September 16, 2020, the Court held a hearing to consider Consul-Tech's Administrative Expense Motion, the Objection, and the Reply (the "Hearing"). After evaluating the briefs as well as the arguments presented at the Hearing, the Court issued the *Order Denying Consul-Tech Caribe Inc's Motion for Allowance and Payment of Administrative Expense Claim* [ECF No. 14320] (the "Order"), denying the Administrative Expense Motion, without prejudice, and ordering the parties to meet and confer to attempt to resolve the Administrative Expense Motion consensually and to file a joint status report on or before March 16, 2021 at 5:00pm. [ECF No. 14320].

6. On March 16, 2021, in compliance with the Order, the Debtor and Movant filed the First Joint Status Report. [ECF No. 16082]. In the First Joint Status Report, the Debtor and Movant informed the Court that they had reached an agreement in principle for the consensual resolution of the Administrative Expense Motion and requested additional time to finalize the agreement.

7. On March 17, 2021, the Court issued the Second Joint Status Report Order, directing the parties to file a further joint status report on or before April 16, 2021, at 5:00 p.m. [ECF No. 16087].

8. On April 16, 2021, the Debtor and Movant filed the Second Joint Status Report. [ECF No. 16452]. In the Second Joint Status Report, the Debtor and Movant informed that AAFAF had exchanged a draft of a proposed settlement agreement with Movant. Nevertheless, the Parties needed additional time to review, incorporate changes and finalize the same.

9. On April 19, 2021, the Court issued the Third Joint Status Report Order, directing the parties to file a further joint status report on or before May 28, 2021, at 5:00 p.m. [ECF No. 16461].

10. On May 28, 2021, the Debtor and Movant filed the Third Joint Status Report. [ECF No. 16839]. In the Third Joint Status Report, the Debtor and Movant informed that the Parties continued to exchange comments and suggestions in connection with the draft of a proposed settlement agreement for the consensual resolution of the Administrative Expense Motion. Nevertheless, the Parties needed additional time to continue these discussions, incorporate changes and finalize the same.

11. On June 1, 2021, the Court issued the Fourth Joint Status Report Order, directing the parties to file a further joint status report on or before **July 14, 2021, at 5:00 p.m.** [ECF No. 16857].

II. STATUS REPORT

12. As detailed in the Administrative Expense Motion and the Objection, the Claim involves services purportedly provided by Movant to over 25 agencies of the Commonwealth. While the Parties have reached an agreement in principle to resolve the Claim, on April 26, 2021, Movant asked Debtor to consider certain revisions to the first draft of the settlement agreement received from Movant, focusing on, among other things, providing for a proposed single transaction, which requires coordination and discussion with several Commonwealth agencies. Since May, 2021, Debtor has been analyzing and discussing internally, with various other agencies of the Debtor, its response and/or suggestions to said proposed revisions in order to evaluate alternatives to provide for the changes requested by the Movant.

13. Accordingly, the Debtor and Movant propose to submit a further status report to the Court on or before August 30, 2021.

Movant's Position.

14. It is Movant's position that this Honorable Court should require Debtor to provide a response to its proposed revisions within a specified period of time that does not exceed thirty (30) days, so as not to indefinitely prolong negotiations and so that they may instead continue in good faith.

Debtor's Position.

15. It is the Debtor's position that it has negotiated and continues to negotiate in good faith with the Movant, as can be seen from the progress made to date to resolve the Claim and as detailed in the various prior status report. Further, the proposed settlement and the revisions suggested by the Movant require substantial coordination among various agencies, which the Debtor continues to do and work expeditiously on. However, and because of the involvement of various agencies of the Debtor in this process, it is difficult to estimate when the same will be completed and the Debtor, while it will continue to work diligently, will likely need additional time to complete the process. Moreover, the Debtor also submits that, contrary to Movant's request, there is no need to unnecessarily involve the Court in settlement negotiations that continue to be voluntary and where, as stated above, both parties have and continue to act in good faith. The Debtor will be required to make payment on the agreed amount of the claim in the relative near future as the Commonwealth is heading towards confirmation.

16. PROMESA section 314(b)(4) only provides holders of allowed administrative claims a right to cash payment on the effective date of a plan of adjustment.⁴

17. Accordingly, Movant is not prejudiced and the Debtor should be afforded additional time to resolve the inter-agencies issues that this claim implicated and to continue to negotiate in good faith to resolve the Claim consensually. If the Parties are unable to reach an agreement by confirmation, Movant can assert its rights to pursue the Claim, and the Debtor its right to oppose it, if needed.

Dated: July 15, 2021

San Juan, Puerto Rico

Respectfully submitted,

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⁴ This is precisely the reason why this Court denied the Administrative Expense Motion. *See, Transcript of Hearing* at p. 27. (“PROMESA does not require Title III debtors to pay administrative expense claims, including those that are undisputed, prior to the effective date of a confirmed Plan of Adjustment... [Consul-Tech] has failed to proffer any compelling reason for the Court to adjudicate the question of allowance of its claim at this juncture rather than afford the Commonwealth additional time to reconcile the claim.”).

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